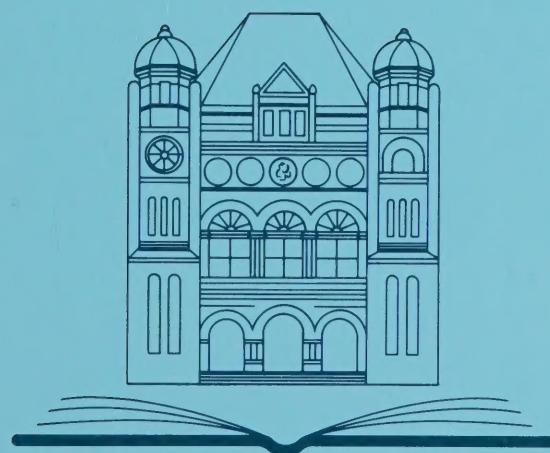


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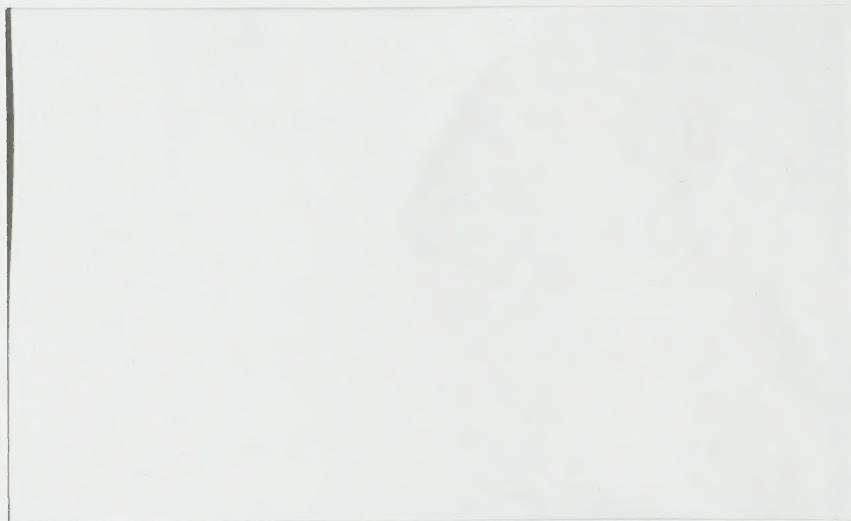
LEGAL AID\*

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## LEGAL AID\*

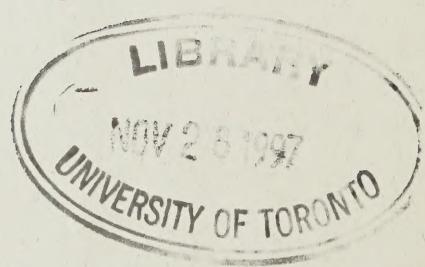
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## INTRODUCTION

For nearly 30 years the Ontario Legal Aid Plan ("the Plan") operated without serious difficulty. Indeed, the Plan's supporters have argued that it has been one of the most successful in the common law world at delivering high quality legal services to the poor, while at the same time providing fair compensation to lawyers.

By 1994-95, however, the Plan was facing significant financial problems. A surge in demand for legal assistance over the previous decade had caused legal aid expenditures to escalate rapidly. With no end in sight, the provincial government discontinued open-ended funding, and the Plan's administrator, the Law Society of Upper Canada, was forced to implement a series of cost-cutting measures that included a significant reduction in services and lower compensation for lawyers.

While it appears that the Plan's immediate financial difficulties have been addressed, the government will have to examine some fundamental issues before the current funding arrangement expires in 1998-99. These include: What were the underlying causes of the Plan's financial difficulties? What type of legal aid system will provide adequate coverage at a reasonable cost? Who should administer the Plan?

This paper begins with a description of the main legal aid models employed in Canada today. It then provides a brief history and overview of the Ontario Legal Aid Plan, and notes some of the causes of the Plan's recent financial difficulties. The paper concludes with a statistical comparison of legal aid plans in Canada, with emphasis on the performance of the Ontario plan.

## LEGAL AID MODELS

Most provinces deliver legal aid through a mix of two models: the judicare model and the staff lawyer model. Recently, Manitoba also experimented with the contract model.

This section briefly describes these models, and notes the main arguments for and against each. Arguments are drawn from a review of the literature on this subject.

### Judicare

The judicare model, which derives its name from the health care system, provides legal assistance through individual private lawyers acting on a fee-for-service basis. Applicants who meet the prescribed financial criteria are issued a legal aid certificate. The certificate can then be taken to a lawyer of the applicant's choice (provided the lawyer is willing to act under the

certificate), and the lawyer bills the legal aid plan for services rendered. Lawyers' fees are prescribed by a tariff.

The judicare model forms the basis of the legal aid system in Ontario, and is employed, to varying degrees, in the other provinces. It can be used to provide both criminal and civil legal aid.

### *Arguments For*

- *Freedom of choice:* In criminal matters, the freedom to choose one's own lawyer is essential if those receiving legal aid are to be placed in the same position as those who can afford their own lawyer. Judicare also provides the freedom to dismiss a lawyer in whom one has lost confidence.
- *Independent representation:* In an adversarial criminal justice system, it is important that defence counsel be completely independent of the government prosecuting the case. The judicare model ensures this independence and, therefore, total loyalty to the client.
- *Dignity of the accused:* By reducing the differences between the person of means and the person without means, judicare diminishes the charitable aspect of legal aid, which in turn helps to maintain the dignity of the accused.
- *Cost is not a valid criterion:* While other models might be cheaper, quality of service, not cost, should be the decisive factor in deciding how best to provide legal services to those in need.

### *Arguments Against*

- *Higher cost:* Judicare is the most expensive method of delivering legal aid. Moreover, changes in demand from one year to the next make funding of a judicare system unpredictable.
- *Organization and control:* A judicare system is not easily organized or controlled, since lawyers provide services on a voluntary basis and are spread unevenly across the province.
- *Abuse:* A fee-for-service system, which links the amount that can be billed to the number of cases handled and services provided, is open to abuse by some unscrupulous lawyers who over-bill the plan.

### **Staff Lawyer/Public Defender Model**

A staff lawyer is employed either directly by the government, or through a government-funded clinic, to provide criminal defence or civil legal services. A lawyer employed by the state to provide criminal defence work is commonly known as a public defender.

### Arguments For

- *Lower Cost:* It is the cheapest system. The total of all salaries paid to staff lawyers is less than is paid to individual private lawyers acting on a fee-for-service basis. Moreover, because costs are fixed, funding requirements will not change from year-to-year with changes in demand and lawyers' billing practices.
- *Cost is a valid criterion:* In an ideal world, cost would not be a criterion when considering the best way to provide legal services to the poor. However, in times of fiscal restraint, funding will be limited, and legal aid plans must consider cheaper ways to provide services in order to maintain adequate coverage for those in need.
- *Specialization:* Because staff lawyers are responsible for only one or a few areas of law, they quickly become specialists in those areas, and can provide a better defence than private lawyers who often have to devote their time to a broad range of legal work.
- *Organization and control:* It is relatively easy to establish a staff lawyer system to handle criminal cases, since offices could simply be located alongside existing Crown prosecutors' offices. For both criminal and civil matters, staff lawyers can be deployed to meet demand in various regions.

### Arguments Against

- *Conflict of interest:* Where the prosecutor and the defence counsel share the same employer (the government), there is the potential for conflict which could compromise the defence counsel's independence and loyalty to his or her client. This could occur, for example, where the prosecutor and defender are assigned to the same criminal court for long periods of time. In these circumstances, personal relationships develop that can influence the conduct of a case.
- *Overworked staff lawyers provide lower quality services:* The sheer volume of criminal cases that a staff lawyer would have to handle would inevitably lead to indifferent and superficial defence work.
- *The public defender system smacks of charity:* The public defender system accentuates the differences between the rich and poor because the services provided to the person without means (he or she must accept the lawyer assigned to the case) are clearly different from those available to the person who can afford to retain his or her own lawyer.

## The Contract Model

The contract model delivers legal assistance in criminal defence and civil matters through individual private lawyers, law firms or local bar associations who are under contract with the legal aid plan. Services are provided in a defined area of law, for a fixed term and for a fixed dollar amount or fixed fee per case.

Manitoba recently experimented with this system as a supplement to its judicare and staff lawyer services. In 1995, Legal Aid Manitoba auctioned off blocks of 50 young offender cases to the lowest bidding law firms.<sup>1</sup>

### *Arguments For*

- *Lower Costs:* A high volume of cases can be handled for a low fixed cost.

### *Arguments Against*

- *Diminished quality of service:* If the fee per case is too low, there will be pressure on lawyers to spend as little time as possible on each file, which could result in lower quality of service.

## HISTORY OF LEGAL AID IN ONTARIO

### Pre-1951

Prior to 1951, there was no organized legal aid in Ontario. Free legal services were provided by individual lawyers on an “as needed” basis. This practice, a long-standing tradition within the profession, was based on the view that the legal profession had an obligation to the community.

Occasionally, courts assigned counsel to indigent persons charged with serious crimes, although there was no formal practice of doing so. Counsel acting in capital offences received nominal compensation for fees and expenses from the Ministry of the Attorney General.

Generally speaking, however, lawyers acting for people who could not pay in criminal or civil matters received no compensation.

### The Voluntary Plan: 1951-1967

Amendments to the *Law Society Act* in 1951 authorized the Law Society of Upper Canada to establish a voluntary legal aid plan. The intent was to establish an organized, province-wide plan for which the legal profession as a whole would be responsible.

The new plan relied on the county and district law associations for delivery of services. Local committees formed by these associations received

applications for legal aid and then assigned counsel to eligible clients. Financial eligibility was determined on the basis of an individual's annual income and number of dependents. Legal services were provided voluntarily by members of the private bar, without remuneration. In the area of criminal law, the plan covered only indictable (more serious) offences, while summary (less serious) and provincial offences were excluded. Most civil matters were covered.

Initially, the administration costs of the voluntary plan were financed entirely by appropriations made by the Law Society from the legal profession. However, beginning in 1952, the province contributed small grants.

### **The Joint Committee on Legal Aid: 1963**

By the early 1960s, it was apparent that the voluntary plan could not meet the growing demand for legal aid. Accordingly, in July 1963, the government appointed The Joint Committee on Legal Aid. The joint committee was composed of four members appointed by the Attorney General and three members appointed by the Law Society. It held public hearings across the province and retained Professor Martin Friedland to conduct statistical studies on the voluntary plan.

The joint committee heard that legal aid was not available uniformly throughout the province and that many eligible individuals were not getting assistance. Professor Friedland's study found that only one person in six in Ontario who required legal aid was receiving it. He also found that 95% of all persons charged with a criminal offence in Toronto who appeared in court for their first appearance and pleaded guilty did not have a lawyer.<sup>2</sup>

In its 1965 report, the joint committee concluded that the existing plan was incapable of meeting the demand for legal aid. Arguing that legal aid should no longer be viewed as a charitable task of the legal profession, the committee recommended that a new criminal and civil legal aid plan be created, and that it should be financed by the provincial government and administered by the Law Society of Upper Canada.

The new plan was to be based on the English judicare model, under which legal aid would be provided by lawyers in private practice on a fee-for-service basis. A judicare model was favoured because it provides the freedom to choose one's own lawyer, ensures representation that is independent of government and minimizes the charitable aspect of legal aid (see arguments for judicare, p. 2 above). The joint committee specifically rejected the public defender system then operating in the United States.<sup>3</sup> The main reasons for this were that the public defender system creates a conflict of interest where the prosecutor and defence counsel are employed by the government, and the

perception that such a system “smacks of charity” (see arguments against the public defender model, p. 3).

## The Legal Aid Act, 1966

The *Legal Aid Act, 1966*,<sup>4</sup> proclaimed into effect on March 29, 1967, implemented the bulk of the recommendations of The Joint Committee on Legal Aid. The Act established the Ontario Legal Aid Plan, a plan based entirely on the judicare model and administered by the Law Society of Upper Canada.

## The Task Force on Legal Aid: 1973

In 1973 the government appointed a provincial task force to assess the performance of the Plan.<sup>5</sup> The Task Force on Legal Aid, chaired by Mr. Justice John Osler, found major gaps in coverage under the judicare system, especially in the provision of legal advice and summary assistance, and in “poverty law” matters, such as landlord and tenant disputes, workers’ compensation and welfare entitlement cases. Significant geographic gaps in coverage were also found.

The task force made two major recommendations. First, it recommended that an independent, non-profit corporation be created to assume administrative responsibility for the plan.<sup>6</sup> Second, the task force called for the creation of a staff lawyer system, based on neighbourhood legal clinics employing lawyers and paralegals, to supplement judicare.<sup>7</sup>

Although the first recommendation was rejected, the second was the impetus for the introduction of community legal clinics in 1976. Today, there are 72 clinics providing services in “poverty law” areas, such as landlord and tenant, workers’ compensation, welfare and immigration.

## The Funding Crisis: 1995

Because funding of the Plan had always been open-ended, it had never experienced serious financial difficulties. The government provided whatever funds were needed to meet the demand for legal services in accordance with the provisions of the *Legal Aid Act*.

However, dramatic increases in demand for legal services between the mid-1980s and the early 1990s caused total expenditures on legal aid to rise from just under \$70 million in 1984-85 to almost \$300 million in 1993-94<sup>8</sup>.

Uneasy about a program that was growing so rapidly, the NDP government entered into a Memorandum of Understanding (MOU) with the Law Society of Upper Canada in September of 1994, which established fixed funding for the Plan through 1998-99.

Despite this arrangement, the Plan faced a deficit of over \$60 million by the middle of 1995, and it was estimated that the Plan would be in arrears of \$275 million by the time the MOU expired in 1998-99.<sup>9</sup>

In the summer of 1995, legal aid lawyers filed a law suit against the newly elected Conservative government when it appeared that full compensation for work done under legal aid certificates could not be guaranteed. In addition, the Plan's administrator, the Law Society of Upper Canada, applied to the courts for a clarification of its obligation to pay lawyers' fees.

In September 1995, the government appointed a Special Advisor on Legal Aid, Stanley Beck, to assess whether the Law Society was capable of administering the Plan within the terms of the MOU. Subsequent to Mr. Beck's appointment, the Law Society approved significant cost-cutting measures that included reduced services and lower fees for lawyers. In December, Mr. Beck reported that, in his view, the Plan could be operated within the terms of the MOU if the Law Society implemented its proposed cost-cutting measures, and if the Plan was closely monitored by independent consultants. Mr. Beck also recommended that the government begin to consider alternatives to the judicare system.<sup>10</sup>

On December 13, 1995, the government accepted the Law Society's proposal for operating the Plan within the terms of the MOU.<sup>11</sup>

## OVERVIEW OF THE ONTARIO LEGAL AID PLAN

Today, the Ontario Legal Aid Plan continues to be administered by the Law Society of Upper Canada, but provides significantly reduced coverage compared with a year ago.

### Structure and Administration

The Plan is governed by the *Legal Aid Act* and its regulations, and is administered on behalf of the province by the Law Society of Upper Canada.<sup>12</sup> A standing committee of the Law Society, the Legal Aid Committee, is responsible for the general administration of the Plan. Responsibility for the day-to-day operation of the Plan rests with the Director of Legal Aid, who is appointed by the Law Society, subject to the approval of the government.<sup>13</sup>

The Plan has two main components: judicare and community legal clinics. The judicare component is administered by Area Directors in each of the 51 regional areas of the province. They establish panels of local lawyers who are willing to provide services under the Plan, and receive and approve applications for legal aid. Clients then take their certificates to lawyers of their choice within the panel. Assessment officers employed by the Ministry of the Attorney General conduct financial assessments of all applicants. An

Area Director can issue a legal aid certificate only upon the receipt of a financial assessment.<sup>14</sup>

The judicare system is supplemented by seventy-two legal clinics located across the province. The clinics are administered by the Law Society's Clinic Funding Committee. Each clinic is overseen by a board of directors composed of members of the community. Boards establish eligibility guidelines and priority of coverage in accordance with the Clinic Funding Committee's policies. Clinic lawyers and staff are employed by the boards of directors.

## Coverage

Judicare provides services in three main areas: criminal defence; family law; and immigration/refugee cases. Coverage in these areas will be significantly reduced in the next three fiscal years as a result of service reductions implemented by the Law Society on April 1, 1996.<sup>15</sup>

There are two parts to these reductions. First, the total number of legal aid certificates issued annually will be reduced to 100,000, down one-third from the 155,000 issued in 1995-96, and down substantially more from the 1992-93 figure of 231,000.<sup>16</sup> Second, a portion of the total annual budget will now be designated for each area of law, and coverage will be provided on a priority basis. This means that certificates are now issued for the most serious cases first, and then for less serious cases, until the budget for each area is used up.

Criminal legal aid covers those offences listed in a federal-provincial cost sharing agreement, as well as some provincial and municipal offences. Under the new priority system, certificates will be issued first to those cases where there is "a likelihood of incarceration" upon conviction.<sup>17</sup>

In family law, coverage was previously provided to almost any matter that had merit and a reasonable chance of success. Under the new priority system, cases involving the safety of a spouse or child, or the protection of a parent/child bond, receive coverage first. Refugee cases now have top priority in the area of immigration.<sup>18</sup>

The 72 community legal clinics offer civil legal aid and advisory services in "poverty law" areas, such as landlord and tenant, workers' compensation, unemployment insurance, welfare, pensions, family, immigration and employment rights. Specialty clinics provide services to the disabled, injured workers, Natives, immigrants and refugees.

In 1993-94, all criminal cases were referred to lawyers in private practice. Seventy-four percent of all civil cases were referred to private sector lawyers, with the remaining cases going to staff lawyers in the clinics.<sup>19</sup>

## Eligibility

All applicants for legal aid must undergo a financial assessment based on assets, income and monthly living expenses. Currently, a person will qualify for assistance, subject to available assets, if his or her net monthly income is \$601 or less. The net income maximums for two person families is \$1,075; for three person families, \$1,137; and for four persons, \$1,281. Persons earning more than these maximums, or who have liquid assets in excess of \$1,000, can be required to contribute to the cost of legal aid.<sup>20</sup>

## Tariff

Subject to the approval of the Ontario government, the fees paid to lawyers providing services under legal aid certificates (known as the tariff) are set by the Law Society in regulations made under the Act.

As part of the Law Society's cost-reduction plan, a new tariff was established on April 1, 1996. The new tariff sets maximum amounts for all services covered by legal aid. While the basic lawyer's fee remains at \$67 per hour, a ceiling has been placed on the number of hours that can be billed to the Plan for individual certificates. In addition, the new tariff eliminates the old block fees under which a lawyer was paid the same amount, regardless of how much time was spent on a case.<sup>21</sup>

The combined effect of the new tariff and the cap on the number of certificates, is that the total amount of fees paid to participating lawyers will be reduced by \$75 million over the life of the MOU.<sup>22</sup>

## Funding

### *Provincial Government*

The effect of the current wording of the *Legal Aid Act* is that provincial government funding for the Plan is open-ended.<sup>23</sup> As a matter of practice, however, open-ended funding ended when the Law Society and the government entered into the Memorandum of Understanding in September, 1994.

Under the terms of the MOU, the Ontario government agreed to provide the Plan with \$194.7 million in 1994-95, \$188 million in 1995-96, and \$167.2 million for each of the next three fiscal years, through 1998-99. The government also agreed to guarantee loans to the Plan and to advance money to cover outstanding accounts. For its part, the Law Society undertook to manage the Plan within these funding limits.

### *Other Sources*

The Plan also receives money from the federal government, under a cost-sharing agreement and under the Canada Assistance Plan (now the Canada Health and Social Transfer), as well as from the Law Foundation of Ontario, client contributions, an annual levy on lawyers and costs awarded by the courts in favour of legal aid clients.

In 1989-90, the federal government froze its contribution under the cost-sharing agreement to criminal legal aid, and capped increases in payments for civil legal aid under the Canada Assistance Plan at 5%. As a result, the provincial contribution to the Plan grew from 40% in 1989-90, to 56% in 1994-95.<sup>24</sup>

### **Accountability**

The *Legal Aid Act* provides three ways for tracking the performance of the Plan. First, the Law Society is required to report annually to the Attorney General on the nature and amount of legal aid given during the year. This report is submitted by the Attorney General to the Cabinet and then tabled in the legislature.<sup>25</sup>

Second, the accounts and financial transactions of the Plan are audited, from time-to-time, by the Provincial Auditor.<sup>26</sup>

Third, an advisory committee on legal aid, composed of judges, lawyers and lay persons appointed by the Attorney General, reports at least once each year to the Attorney General on the operation of the Plan.<sup>27</sup>

In addition to these statutory provisions, the Plan is now monitored by an independent consultant appointed by the government, as recommended by the Special Advisor on Legal Aid in his 1995 review of the Plan. If the monitor finds that the Plan is exceeding the funding limits set out in the MOU, the Law Society will be required to make further reductions.

### **CAUSES OF THE PLAN'S FUNDING PROBLEMS**

Clearly, many factors beyond the control of the Plan's administrators contributed to its recent financial difficulties. However, it is also clear that some factors originated within the Plan itself.

Listed below are some of the most commonly identified sources of the Plan's funding problems.

## Problems Outside the Plan

- Unemployment, crime and family disruption caused by the recession of the early 1990s led to a significant increase in demand for legal assistance.
- In 1989-90, the federal government froze its cost-sharing contribution to criminal cases and capped increases in contributions under the Canada Assistance Plan for civil cases at 5%.
- Police and Crown prosecutors are under greater pressure from the public to lay charges and prosecute cases to the fullest extent.
- The focus on domestic violence and violence against women in recent years has led to more spousal assault and sexual assault charges being laid.
- A crack-down on youth crime has led to more charges being laid under the *Young Offenders Act*.
- The *Canadian Charter of Rights and Freedoms* has resulted in longer and more complex cases.

## Problems Within the Plan

- In 1987, the legal aid tariff in Ontario was doubled. According to a 1991 study, the massive rise in legal aid expenditures between 1987 and 1991 can be linked directly to the tariff increase.<sup>28</sup>
- Under the old block fee system, lawyers were paid a fixed amount for acting in certain criminal matters, regardless of how much time was spent on the case. So-called “dump-truck” lawyers took advantage of this system by pleading large numbers of clients guilty in order to collect the block fee.
- During the funding “crisis” of 1995, many lawyers panicked when it was suggested that they would not be paid for all services rendered under previous or future legal aid certificates. This resulted in a flood of interim accounts being submitted to the Plan which aggravated the Plan’s short-term financial situation.
- Due to cut-backs in staff, the Plan could not adequately screen legal aid applicants.

## Role of the Law Society

It has also been suggested that the Plan’s administrator bears some responsibility for the Plan’s recent financial problems. Some go so far as to say that it is inappropriate to have the Law Society in charge of the Plan at all.

With respect to the recent cost overruns, critics say the Law Society was indifferent to the situation because it assumed that the government would continue open-ended funding, regardless of the growth in demand. Indeed, it appears that the Law Society continued to hold this position even after the negotiation of the MOU and the fixed funding arrangement in 1994.<sup>29</sup>

Others argue that the Law Society, largely a volunteer organization, is simply not capable of dealing with complex financial matters. This is evident, it is argued, not only from the Law Society's handling of legal aid, but also from its mismanagement of the legal profession's liability insurance program, which also ran into serious deficit problems in recent years.<sup>30</sup>

Still others believe that there is a fundamental conflict in placing the legal profession's governing body in charge of a social service provided by lawyers. They argue that lawyers have been the main beneficiaries of the judicare system and that the Law Society, which is beholden to lawyers' interests, has resisted introducing reforms in order to protect the economic interests of its members. This resistance is particularly evident from the Law Society's lack of enthusiasm for expanding the staff lawyer system, a move that would reduce costs, but would also take work away from private practitioners.<sup>31</sup>

As early as 1974, The Task Force on Legal Aid observed that:

... it is impossible to perceive the direction of the Legal Aid Plan as being sufficiently single-minded if it is left in the hands of a Committee of the Law Society, reporting to Convocation, the governing body of the Society, both groups being composed overwhelmingly of lawyers.<sup>32</sup>

The Task Force also concluded that "inflexibility" within the Plan prevented it from responding to local needs through such mechanisms as neighbourhood legal clinics.<sup>33</sup>

These findings led the task force to recommend that control and administration of the Plan be turned over to a statutory non-profit corporation that would have the sole function of administering the legal aid plan.<sup>34</sup> This recommendation was rejected.

Several provinces have established Crown corporations to administer their legal aid programs, including British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia and Newfoundland.

## STATISTICAL COMPARISON OF THE ONTARIO LEGAL AID PLAN WITH OTHER PLANS

The chart below is based on statistics for 1993-94, the latest statistics available from Statistics Canada. It should be noted that these statistics were published before the Ontario government and the Law Society of Upper Canada negotiated the Memorandum of Understanding in September, 1994, under which the government agreed to provide fixed levels of funding for the fiscal years 1994-95 to 1998-99. Moreover, the 1993-94 statistics do not reflect the cost-reduction plan implemented by the Law Society in April, 1996, which included a limit of 100,000 on the number of legal aid certificates to be issued each year, and a reduction in the fees that will be paid to lawyers.

Accordingly, Ontario's position relative to the other provinces may well change when later statistics are published.

### STATISTICAL COMPARISON OF PROVINCIAL LEGAL AID PLANS : 1993-94

	Per Capita Spending \$	Direct Legal Expenditures		Cost Per Case		Direct Legal Expenditures		Approved Applications Per 1000 Population	
		Criminal %	Civil %	Criminal \$	Civil \$	Staff %	Judicare %	Criminal	Civil
Nfld	8.74	55	45	360	865	82	18	11	5
PEI	3.81	55	45	228	3275	83	17	9	1
NS	11.97	51	49	520	543	75	25	11	10
NB	4.67	87	13	1172	3008	0	100	3	0
Que	16.24	35	65	300	400	55	45	17	24
Ont	27.71	43	57	1058	1033	12	88	10	13
Man	13.48	53	47	455	564	35	65	13	10
Sask	8.57	65	35	325	439	93	7	16	6
Alta	10.65	70	30	691	948	3	97	10	3
BC	28.54	46	54	997	1637	15	85	12	9
Provincial Average	13.44	56	44	611	1270	45	55	11	8

Source: Statistics Canada, Canadian Centre for Justice Statistics, *Legal Aid in Canada: Resource and Caseload Statistics, 1993-94*, and Nova Scotia, Legal Aid Review Team, *Review of Legal Aid Services in Nova Scotia, A Report by the Legal Aid Review Team for Nova Scotia Department of Justice, Nova Scotia Legal Aid Commission*, ([Halifax]: The Team, April 1996), p. 19.

The above figures indicate:

- *Per capita spending:* At \$27.71 per person, per capita spending on legal aid in Ontario in 1993-94 was the second highest among the provincial plans. However, Ontario's position could change in subsequent years because of the fixed budget provisions established in the 1994 MOU.
- *Cost per case:* In 1993-94, Ontario provided legal aid services at a relatively high cost. Ontario ranked second highest in criminal matters and fourth highest in civil cases. The chart also indicates that, with the exception of PEI, provinces relying most heavily on the judicare model (New Brunswick, Ontario, Alberta and B.C.) experienced the highest costs.
- *Coverage:* Ontario's number of approved applications was below the provincial average for criminal matters and was well above the provincial average for civil cases. Coverage in Ontario will drop in subsequent years, due to the annual limit of 100,000 certificates which took effect in 1996-97.
- *Spending by matter:* Ontario's spending between criminal (43%) and civil (57%) matters departed from the provincial average. In most other provinces, the emphasis is placed on criminal matters.
- *Method of delivery:* Private lawyers handle the vast majority of legal aid work in Ontario. This situation will not change under the terms of the MOU or the Law Society's recent cost-reduction measures. Staff lawyers handle most of the work in Newfoundland, PEI, Nova Scotia, Quebec and Saskatchewan.

## CONCLUSION

For nearly 30 years the Ontario Legal Aid Plan operated without serious problems. The Plan, based primarily on the judicare model, was considered by some to be the best in the common law world. However, dramatic increases in legal aid expenditures between 1985 and 1995 led successive provincial governments to demand major changes. The Plan now operates on a fixed-funding basis, and provides significantly reduced coverage compared with a year ago.

While the Plan's recent financial difficulties can be largely attributed to external factors, the situation was aggravated by problems within the Plan itself. Critics of the Law Society argue that it mismanaged the Plan. Others suggest that the Law Society has resisted reforms that would save money, such as expanding the staff lawyer component of the Plan, in order to protect the interests of lawyers in private practice.

The latest statistics indicate that the provinces that rely most heavily on the judicare model, such as Ontario, experience higher costs than provinces delivering legal aid through staff lawyers.

## NOTES

<sup>1</sup> Tracey Tyler, "Manitoba lawyers bid for young offender clients," *Toronto Star*, 2 October 1995, p. A1.

<sup>2</sup> Ontario, The Joint Committee on Legal Aid (William B. Common, Chair), *Report of the Joint Committee on Legal Aid* ([Toronto]: The Committee, 1965), pp. 19-20.

<sup>3</sup> *Ibid.*, pp. 96-100.

<sup>4</sup> S.O. 1966, c. 80.

<sup>5</sup> Ontario, The Task Force on Legal Aid (John Osler, Chair), *Report of the Task Force on Legal Aid (Parts I and II)* (Toronto: The Task Force, 1974-75).

<sup>6</sup> *Ibid.*, p. 27.

<sup>7</sup> *Ibid.*, Chapter 5.

<sup>8</sup> Statistics Canada, Canadian Centre for Justice Statistics, *Legal Aid in Canada: Resource and Caseload Statistics, 1993-94* (Ottawa: Minister of Industry, Science and Technology, 1995), p. 45.

<sup>9</sup> Ontario, Ministry of the Attorney General, "Attorney General Accepts Law Society's Plan to Downsize Legal Aid," *News Release*, 13 December 1995.

<sup>10</sup> Ontario, Ministry of the Attorney General (Stanley Beck, Special Advisor), *Report of the Special Advisor to the Attorney General on Legal Aid* ([Toronto]: The Ministry, December 1995).

<sup>11</sup> Ontario, Ministry of the Attorney General, "Attorney General Accepts Law Society's Plan to Downsize Legal Aid," *News Release*, 13 December 1995.

<sup>12</sup> *Legal Aid Act*, R.S.O. 1990, c. L.9, s. 2.

<sup>13</sup> *Ibid.*, s. 3(1).

<sup>14</sup> *Ibid.*, s. 16(5).

<sup>15</sup> Law Society of Upper Canada, "Ontario's Legal Aid Plan to Provide Fewer Legal Services for the Province's Poor," *Communiqué*, 11 March 1996.

<sup>16</sup> Law Society of Upper Canada, *Legal Aid Bulletin*, No. 107 (Toronto: Ontario Legal Aid Plan, February 1996).

<sup>17</sup> Law Society of Upper Canada, *Communiqué*, 11 March 1996.

<sup>18</sup> *Ibid.*

<sup>19</sup> Statistics Canada, Canadian Centre for Justice Statistics, *Legal Aid in Canada: Resource and Caseload Statistics, 1993-94*, p. 114.

<sup>20</sup> Ontario Legal Aid Plan, *Financial Eligibility: Synopsis for Lawyers*, April 1996.

<sup>21</sup> Law Society of Upper Canada, *Legal Aid Bulletin*, No. 109 (Toronto: Ontario Legal Aid Plan, May 1996).

<sup>22</sup> Ontario, Ministry of the Attorney General, "Attorney General Accepts Law Society's Plan to Downsize Legal Aid," *News Release*, 13 December 1995.

<sup>23</sup> Section 7(1) of the *Legal Aid Act* states: "The money required for the purposes of this Act shall be paid to the Law Society by the Treasurer of Ontario and Minister of Economics from time to time upon the requisition of the Law Society."

<sup>24</sup> Ontario, *Report of the Special Advisor to the Attorney General on Legal Aid*, p. 5.

<sup>25</sup> *Legal Aid Act*, s. 10.

<sup>26</sup> *Ibid.*, s. 8.

<sup>27</sup> *Ibid.*, s. 9.

<sup>28</sup> Stephen T. Easton, et al., *Legal Aid: Efficiency, Cost and Competitiveness* (Kingston: School of Policy Studies, Queen's University, January 1994), p. 41.

<sup>29</sup> Paula Kulig, "Bled Dry," *Canadian Lawyer* 20:2 (February 1996): 28.

<sup>30</sup> *Ibid.*, p. 30, and Susan Eng, "It's time to assess law society," *Toronto Star*, 18 September 1995, p. A17.

<sup>31</sup> Paula Kulig, "Bled Dry," *Canadian Lawyer*, p. 30.

<sup>32</sup> Ontario, The Task Force on Legal Aid, *Report of The Task Force on Legal Aid (Part I)*, p. 23.

<sup>33</sup> *Ibid.*, p. 25.

<sup>34</sup> *Ibid.*, p. 27.





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